

	I.5.e. What mechanisms should the parties utilize to implement, in an expeditious fashion, changes resulting from any successful legal appeals of the Commission's ISP Remand Order?
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1

2

AUGUST 17, 2001

3

1 **Q. PLEASE STATE YOUR NAME.**

2 A. My name is Robert Kirchberger.

3 **Q. ARE YOU THE SAME ROBERT KIRCHBERGER WHO FILED DIRECT**
4 **TESTIMONY ON BEHALF OF AT&T ON JULY 31, 2001?**

5 A. Yes.

6 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

7
8 A. My rebuttal testimony responds to the Direct Testimony of Harold West, which
9
10 addresses the general state of local exchange competition in Virginia. In addition,
11 my testimony addresses the following issues:

12 ISSUE I-5: What are the appropriate terms and conditions to
13 comprehensively implement the Commission's ISP Remand Order?

14 I.5.a. How should Verizon and AT&T calculate whether traffic
15 exceeds a 3:1 ratio of terminating to originating traffic?

16
17 I.5.b. How should Verizon and AT&T implement the rate caps
18 for ISP-bound traffic?

19
20 I.5.c. How should Verizon and AT&T calculate the growth cap
21 on the total number of compensable ISP-bound traffic
22 minutes?

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24 I.5.d. How should the parties implement a Verizon offer to
25 exchange all traffic subject to section 251(b)(5) at the rate
26 mandated by the FCC for terminating ISP-bound traffic?

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36 Finally, my testimony reports on the status of the following issues:

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7 **Q. DID VERIZON ADDRESS ISSUE I.5?**

8
9 A. Steven J. Pitterle and Pete D'Amico, Verizon's intercarrier compensation
10 witnesses, attached proposed contract language to their testimony (Exhibit IC-3)
11 but did not otherwise substantively address this issue in their testimony.¹

12 **Q. DID VERIZON PROPOSE THE TERMS AND CONDITIONS**
13 **NECESSARY TO IMPLEMENT THE COMMISSION'S *ISP REMAND***
14 ***ORDER* IN ITS CONTRACT?**

15 A. Not really. Basically, Verizon proposed some newly defined terms and inserted
16 those terms into certain previously agreed-upon contract provisions in ways that

¹ See Direct Testimony of Pitterle/D'Amico at 3-5 (discussion of procedural posture of reciprocal compensation issue).

1 could significantly change the operation or application of those provisions. But it
2 did not provide certain detail concerning the critical implementation provisions
3 that the AT&T proposed language includes. For example, Verizon states that the
4 determination of whether traffic is eligible for reciprocal compensation “shall be
5 performed in accordance with Paragraphs 8 and 79, and other applicable
6 provisions, of the FCC Internet Order . . .”² While I do not disagree with
7 Verizon’s statement on a very high level, merely referring to the FCC’s *ISP*
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9 Contrast this with AT&T’s proposal, which specifically prescribes the methods by
10 which the Parties would identify and compensate each other for ISP-bound
11 traffic.³

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13 **SUFFICIENTLY DETAILED IMPLEMENTATION PROVISIONS?**

14 A. Although Verizon would like to portray the FCC’s decision as simple and self-
15 executing, in reality the decision requires carriers to make a series of complex
16 calculations to determine what traffic is eligible for reciprocal compensation as
17 well as what rates should be applied. Without contract language that specifies
18 how to implement the FCC’s *ISP Remand Order*, the whole process becomes ripe
19 for Verizon abuse. Vague and ambiguous implementation language gives
20 Verizon more latitude to challenge such critical questions as what traffic is
21 eligible for the full reciprocal compensation rate. Significantly, disputes with
22 Verizon centering on such implementation issues only add to the CLECs’ cost of

² Testimony of Pitterle and D’Amico, Exhibit IC-3, § 2.3.2.1

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1 serving local customers in Virginia. On the other hand, a clear roadmap
2 governing implementation provided upfront will allow the parties to avoid these
3 unnecessary and costly disputes.

4 **Q. CAN YOU PROVIDE SOME OTHER EXAMPLES OF WHERE**
5 **VERIZON'S PROPOSED IMPLEMENTATION LANGUAGE WAS TOO**
6 **GENERAL?**

7 A. Yes. For example, Verizon did not specify the rate levels that would apply to
8 ISP-bound traffic or even the timeframe under which those rates would apply.
9 Therefore, one could not even determine the termination rate for ISP-bound traffic
10 by reading this portion of the Verizon proposed contract. In contrast, AT&T's
11 proposed contract language specifies both the per minute charge and the effective
12 dates for such charges.⁴

13 Another example is Verizon's failure to describe precisely how the parties
14 would identify which traffic exceeds the 3:1 ratio and how to calculate the
15 "growth caps" ordered by the Commission. In contrast, AT&T provides a
16 detailed, unambiguous, formula for making these critical calculations.⁵

17 **Q. DID VERIZON PROVIDE ANY LANGUAGE THAT IMPLEMENTS THE**
18 **"MIRRORING" RULE DEVELOPED BY THE COMMISSION IN THE**
19 **ISP REMAND ORDER?**

20 A. No. In its Order at ¶ 89, the Commission stated: "The rate caps for ISP-bound
21 traffic that we adopt here apply therefore *only* if an incumbent LEC offers to
22 exchange all traffic subject to section 251(b)(5) at the same rate."⁶ Verizon,
23 however, failed to include language that would constitute an unequivocal offer, as

⁴ See Kirchberger Exhibit A, § 2.2

⁵ See, e.g., Kirchberger Exhibit A, Section 2.3 & 2.4.

⁶ *ISP Remand Order*, ¶ 89 (emphasis in original).

1 the Order required. AT&T, in contrast, included such language in Section 2.2.3
2 of its Proposed Contract.

3 **Q. DOES AT&T PROPOSE THAT VERIZON SATISFY ANY OTHER**
4 **CONDITIONS BEFORE THE NEW RATES BECOME EFFECTIVE?**

5 A. Yes. AT&T proposes that Verizon must pay “all past due amounts owed AT&T
6 for the delivery of ISP-bound traffic prior to June 14, 2001.” Verizon simply
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8 two years – during which time it enjoyed a windfall (*i.e.*, paying **zero**
9 compensation for ISP-bound traffic) – and then immediately enter into a much
10 more favorable rate scheme. AT&T merely seeks fair treatment, payment of what
11 Verizon owes, before Verizon reaps the benefits of the new rate structure.

12 **Q. DID VERIZON PROPOSE ANY LANGUAGE THAT WOULD**
13 **SPECIFICALLY ADDRESS A REVERSAL OR MODIFICATION OF THE**
14 **ISP REMAND ORDER BY THE FEDERAL COURT?**

15 A. No, Verizon completely ignored this important issue. AT&T, however, proposed
16 specific language that would provide for an expeditious true-up of the reduced
17 reciprocal compensation rates to the previous compensation levels in the event
18 that the United States Court of Appeals for the District of Columbia Circuit.
19 stayed, reversed or modified the *ISP Remand Order*.⁷ Such a mechanism
20 properly recognizes that the parties have entered into this agreement vigorously
21 disputing the conclusions developed in the *ISP Remand Order*. The AT&T
22 proposed language would permit the parties to be made whole in the wake of any
23 substantial modification by the DC Circuit.

⁷ AT&T Proposed Contract, ¶ 2.5.

1 **Q. HAS VERIZON INCLUDED ANY PROPOSED CONTRACT LANGUAGE**
2 **THAT YOU FIND TO BE PARTICULARLY PROBLEMATIC?**

3 A. Yes, I am troubled by the term “Measured Internet Traffic” as used by Verizon in
4 its proposed contract. Verizon defines this term in a manner that could severely
5 limit the amount of ISP-bound traffic that would be subject to compensation
6 consistent with the Commission’s *ISP Remand Order*. I am also concerned that
7 the breadth of some of the other terms newly defined by Verizon to exclude
8 categories of traffic subject to reciprocal compensation could be the subject of
9 abuse and could lead to interpretational disputes.⁸

10
11 **REBUTTAL OF DIRECT TESTIMONY OF HAROLD WEST**

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13 **Q. IS AT&T ABLE TO REBUT VERIZON’S DIRECT TESTIMONY OF**
14 **HAROLD WEST?**

15
16 A. No. In the Direct Testimony of Harold West and its Attachment A, Verizon relies
17 on data from thirteen competitors, eleven of whom are not party to this case,⁹ to
18 suggest that local exchange competition is “thriving” in Virginia. The
19 information Verizon cites from these CLECs is proprietary to the CLECs.
20 Verizon shared this proprietary information with the Commission. Verizon did
21 not share this information with the Petitioners in this case and thus it is not
22 verifiable.

23 **Q. WHAT TYPE OF CLEC-SPECIFIC PROPRIETARY INFORMATION**
24 **DID VERIZON SHARE WITH THE FCC, BUT NOT WITH THE**
25 **PETITIONERS?**
26

⁸ See, e.g., Pitterle and D’Amico Exhibit IC-3, section 2.3.

⁹ Verizon relies on data from AT&T, Cox, Cavalier, Adelphia, Covad, Rhythms, NAS, One Point, Net2000, Allegiance Telecom, Comcast, Intermedia, KMC, NTELOS, US LEC. Verizon fails to identify the fact that One Point is a subsidiary of Verizon Corp, and not actually a competitor.

1 A. Verizon refers to the following proprietary information from several CLECs,

2 including AT&T, Cox and WorldCom:

3 (1) The number of telephone numbers which various CLECs have
4 ported away from Verizon

5 (2) The number of lines the CLECs have provisioned using their
6 own facilities;

7 (3) The number of orders for directory listings the CLECs have
8 placed with Verizon;

9 (4) The number of unbundled loops the CLECs were leasing from
10 Verizon;

11 (5) The number of NXX codes the CLECs had obtained for
12 Virginia;

13 (6) The number of resold lines the CLECs have ordered
14 from Verizon; and

15 (7) The number of physical and virtual collocation arrangements.

16 **Q. HOW DID VERIZON HAVE ACCESS TO THIS CLEC-SPECIFIC**
17 **PROPRIETARY INFORMATION?**

18
19 A. Verizon has access to these by virtue of their unique position of ILEC. All of
20 these CLECs, even if they are facilities-based, need some service from Verizon.

21 All carriers, even facilities-based carriers, need to port telephone numbers from
22 Verizon, order directory listings from Verizon. Moreover, carriers request
23 collocation in Verizon's central offices, so Verizon is well aware of the location
24 and type of equipment deployed by competitors in these facilities. Because
25 Verizon is the ILEC, Verizon is privy to a wealth of proprietary information —
26 information which Verizon compiled and shared with the Commission, but not
27 with the parties to this case.

28
29 **Q. DID VERIZON REQUEST, LET ALONE OBTAIN, THE CONSENT OF**
30 **AT&T BEFORE DISCLOSING ITS PROPRIETARY INFORMATION TO**
31 **THE FCC?**

1
2 A. No.

3
4 **Q. IS THERE ANY REASON TO SUGGEST THAT VERIZON'S**
5 **PRESENTATION OF THE CLEC-SPECIFIC INFORMATION IS**
6 **INACCURATE OR MISLEADING?**

7
8 A. Yes. One instance in particular highlights the incomplete nature of Verizon's
9 disclosure of CLEC-specific proprietary information. Verizon states that CLECs
10 are providing service through 107,000 resold lines.¹⁰ Verizon then adds a
11 footnote which states that One Point uses some undisclosed, proprietary number
12 of these resold lines.¹¹ Verizon never mentions, however, that One Point is a
13 subsidiary of Verizon Corp. The failure to disclose that key fact Verizon may
14 have similarly failed to disclose other important information needed to assess the
15 accuracy of the conclusions Verizon draws from the CLEC-specific information.

16 There are other reasons to distrust Verizon's data. For example, it may be
17 true that CLECs have 1300 NXX codes in Virginia today, but how many of them
18 are being used, and for the ones being used, how many telephone numbers are
19 active? Similarly, it may be true that data CLECs and DSL providers have built
20 approximately 175 physical collocation arrangements in Virginia, but how many
21 of those arrangements are dark right now? Bankruptcies of several data CLECs
22 and DSL providers have been widely reported. Do the data CLECs and DSL
23 providers who have the 175 collocation arrangements in Virginia have plans to

¹⁰ Attachment A to Harold West's Direct Testimony at 1.

¹¹ *Id.* at 1 n.2.

1 provide service going forward or are they headed for bankruptcy?¹² The way
2 Verizon has presented its information, neither the Petitioners nor the FCC can
3 know for sure.

4 **Q. ARE VERIZON'S CLAIMS ABOUT AT&T ACCURATE?**

5
6 A. No. Verizon states that AT&T has 440 NPA-NXX codes in Virginia.¹³ In fact,
7 AT&T has **BEGIN AT&T PROPRIETARY 44 END AT&T PROPRIETARY**
8 NPA NXX codes in Virginia. If Verizon is misstating AT&T's information, even
9 if unintentionally, then there is reason to believe that it is also misstating other
10 carriers' data as well. AT&T would need to see the CLEC-specific proprietary
11 information to be able to determine whether Verizon has made similar errors or
12 mischaracterizations in presenting the CLEC-specific information.

13 **Q. WILL AT&T BE ABLE TO REBUT THE DIRECT TESTIMONY OF**
14 **HAROLD WEST?**

15
16 A. We hope so. The Petitioners recently filed a Motion to Strike which, among other
17 things, requested that Verizon either obtain the CLECs' consent to produce the
18 information subject to the protective order in this case or strike the testimony
19 from the proceeding. If Verizon provides the CLEC-specific information, AT&T
20 will review it and respond in the testimony to be filed on September 5, 2001.

¹² In fact, according to Rhythms' website, "Rhythms has decided the best course of action is to continue its restructuring under the protection of the federal bankruptcy laws." <http://www.rhythms.com/ch11.cfm>. Rhythms has filed for protection under Chapter 11 of the U.S. Bankruptcy Code. Further, "the Company will continue to operate the network until such time as it reasonably determines that it is unlikely to attract an acceptable bid for the Company as a "going concern", at which point the Company plans to provide customers with at least 31 days written notice prior to any network service termination." Covad recently announced similar Chapter 11 bankruptcy plans. <http://www.covad.com/financialupdate>. With this information, it is surprising that Verizon can claim that Rhythm's facilities represent competition.

¹³ Direct Testimony of Harold West at 6.

1
2 **Issue III.16. This issue is common to AT&T and WorldCom.**
3

***Referral Announcements* When a customer chooses AT&T as a local service provider, but does not retain its original telephone number, should Verizon, at AT&T's request, provide a referral announcement on the abandoned number that provides the same level of information and capabilities that Verizon provides to its own customers?**

4
5 **Q. ARE YOU ADDRESSING SUBSTANTIVE ISSUES REGARDING**
6 **REFERRAL ANNOUNCEMENTS?**

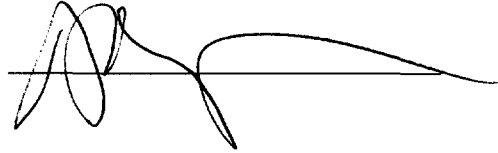
7 A. Not at this time. AT&T and Verizon are still engaged in productive negotiations
8 on this issue that should lead to a mutually acceptable resolution of this issue. In
9 the event that a reasonable settlement could not be reached on this issue, I will
10 address AT&T's concerns in the next round of testimony.

11
12 **Q. DOES THIS COMPLETE YOUR TESTIMONY?**

13 A. Yes.

I, Robert J Kirchberger hereby swear and affirm that the foregoing rebuttal testimony was prepared by me or under my direct supervision or control and is true and accurate to the best of my knowledge and belief.

Signed:

A handwritten signature in black ink, appearing to read "Robert J. Kirchberger", written over a horizontal line.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
Petition of AT&T Communications)
of Virginia, Inc., Pursuant)
to Section 252(e)(5) of the)
Communications Act, for Preemption)
of the Jurisdiction of the Virginia)
State Corporation Commission)
Regarding Interconnection Disputes)
with Verizon-Virginia, Inc.)
)

CC Docket No. 00-251

RECEIVED

AUG 17 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**REBUTTAL TESTIMONY OF
ROBERT J. KIRCHBERGER
ON BEHALF OF AT&T¹**

PUBLIC VERSION

ISSUES ADDRESSED	
I-5	<p>What are the appropriate terms and conditions to comprehensively implement the Commission's ISP Remand Order?</p> <p>I.5.a. How should Verizon and AT&T calculate whether traffic exceeds a 3:1 ratio of terminating to originating traffic?</p> <p>I.5.b. How should Verizon and AT&T implement the rate caps for ISP-bound traffic?</p> <p>I.5.c. How should Verizon and AT&T calculate the growth cap on the total number of compensable ISP-bound traffic minutes?</p> <p>I.5.d. How should the parties implement a Verizon offer to exchange all traffic subject to section 251(b)(5) at the rate mandated by the FCC for terminating ISP-bound traffic?</p>

¹ This Affidavit is presented on behalf of AT&T Communications of Virginia, Inc., TCG Virginia, Inc., ACC National Telecom Corp., MediaOne of Virginia and MediaOne Telecommunications of Virginia, Inc. (together, "AT&T").

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⁸ See, e.g., Pitterle and D’Amico Exhibit IC-3, section 2.3.

⁹ Verizon relies on data from AT&T, Cox, Cavalier, Adelphia, Covad, Rhythms, NAS, One Point, Net2000, Allegiance Telecom, Comcast, Intermedia, KMC, NTELOS, US LEC. Verizon fails to identify the fact that One Point is a subsidiary of Verizon Corp, and not actually a competitor.

1 A. Verizon refers to the following proprietary information from several CLECs,
2 including AT&T, Cox and WorldCom:

- 3 (1) The number of telephone numbers which various CLECs have
4 ported away from Verizon
- 5 (2) The number of lines the CLECs have provisioned using their
6 own facilities;
- 7 (3) The number of orders for directory listings the CLECs have
8 placed with Verizon;
- 9 (4) The number of unbundled loops the CLECs were leasing from
10 Verizon;
- 11 (5) The number of NXX codes the CLECs had obtained for
12 Virginia;
- 13 (6) The number of resold lines the CLECs have ordered
14 from Verizon; and
- 15 (7) The number of physical and virtual collocation arrangements.

16 **Q. HOW DID VERIZON HAVE ACCESS TO THIS CLEC-SPECIFIC**
17 **PROPRIETARY INFORMATION?**

18
19 A. Verizon has access to these by virtue of their unique position of ILEC. All of
20 these CLECs, even if they are facilities-based, need some service from Verizon.
21 All carriers, even facilities-based carriers, need to port telephone numbers from
22 Verizon, order directory listings from Verizon. Moreover, carriers request
23 collocation in Verizon's central offices, so Verizon is well aware of the location
24 and type of equipment deployed by competitors in these facilities. Because
25 Verizon is the ILEC, Verizon is privy to a wealth of proprietary information —
26 information which Verizon compiled and shared with the Commission, but not
27 with the parties to this case.

28
29 **Q. DID VERIZON REQUEST, LET ALONE OBTAIN, THE CONSENT OF**
30 **AT&T BEFORE DISCLOSING ITS PROPRIETARY INFORMATION TO**
31 **THE FCC?**

1
2 A. No.

3
4 **Q. IS THERE ANY REASON TO SUGGEST THAT VERIZON'S**
5 **PRESENTATION OF THE CLEC-SPECIFIC INFORMATION IS**
6 **INACCURATE OR MISLEADING?**
7

8 A. Yes. One instance in particular highlights the incomplete nature of Verizon's
9 disclosure of CLEC-specific proprietary information. Verizon states that CLECs
10 are providing service through 107,000 resold lines.¹⁰ Verizon then adds a
11 footnote which states that One Point uses some undisclosed, proprietary number
12 of these resold lines.¹¹ Verizon never mentions, however, that One Point is a
13 subsidiary of Verizon Corp. The failure to disclose that key fact Verizon may
14 have similarly failed to disclose other important information needed to assess the
15 accuracy of the conclusions Verizon draws from the CLEC-specific information.

16 There are other reasons to distrust Verizon's data. For example, it may be
17 true that CLECs have 1300 NXX codes in Virginia today, but how many of them
18 are being used, and for the ones being used, how many telephone numbers are
19 active? Similarly, it may be true that data CLECs and DSL providers have built
20 approximately 175 physical collocation arrangements in Virginia, but how many
21 of those arrangements are dark right now? Bankruptcies of several data CLECs
22 and DSL providers have been widely reported. Do the data CLECs and DSL
23 providers who have the 175 collocation arrangements in Virginia have plans to

¹⁰ Attachment A to Harold West's Direct Testimony at 1.

¹¹ *Id.* at 1 n.2.

1 provide service going forward or are they headed for bankruptcy?¹² The way
2 Verizon has presented its information, neither the Petitioners nor the FCC can
3 know for sure.

4 **Q. ARE VERIZON'S CLAIMS ABOUT AT&T ACCURATE?**

5
6 A. No. Verizon states that AT&T has 440 NPA-NXX codes in Virginia.¹³ In fact,
7 AT&T has **BEGIN AT&T PROPRIETARY END AT&T PROPRIETARY**
8 NPA NXX codes in Virginia. If Verizon is misstating AT&T's information, even
9 if unintentionally, then there is reason to believe that it is also misstating other
10 carriers' data as well. AT&T would need to see the CLEC-specific proprietary
11 information to be able to determine whether Verizon has made similar errors or
12 mischaracterizations in presenting the CLEC-specific information.

13 **Q. WILL AT&T BE ABLE TO REBUT THE DIRECT TESTIMONY OF**
14 **HAROLD WEST?**

15
16 A. We hope so. The Petitioners recently filed a Motion to Strike which, among other
17 things, requested that Verizon either obtain the CLECs' consent to produce the
18 information subject to the protective order in this case or strike the testimony
19 from the proceeding. If Verizon provides the CLEC-specific information, AT&T
20 will review it and respond in the testimony to be filed on September 5, 2001.

12 In fact, according to Rhythms' website, "Rhythms has decided the best course of action is to continue its restructuring under the protection of the federal bankruptcy laws." <http://www.rhythms.com/ch11.cfm>. Rhythms has filed for protection under Chapter 11 of the U.S. Bankruptcy Code. Further, "the Company will continue to operate the network until such time as it reasonably determines that it is unlikely to attract an acceptable bid for the Company as a "going concern", at which point the Company plans to provide customers with at least 31 days written notice prior to any network service termination." Covad recently announced similar Chapter 11 bankruptcy plans. <http://www.covad.com/financialupdate>. With this information, it is surprising that Verizon can claim that Rhythm's facilities represent competition.

13 Direct Testimony of Harold West at 6.

1
2 **Issue III.16. This issue is common to AT&T and WorldCom.**
3

***Referral Announcements* When a customer chooses AT&T as a local service provider, but does not retain its original telephone number, should Verizon, at AT&T's request, provide a referral announcement on the abandoned number that provides the same level of information and capabilities that Verizon provides to its own customers?**

4
5 **Q. ARE YOU ADDRESSING SUBSTANTIVE ISSUES REGARDING**
6 **REFERRAL ANNOUNCEMENTS?**

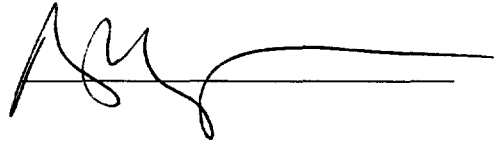
7 A. Not at this time. AT&T and Verizon are still engaged in productive negotiations
8 on this issue that should lead to a mutually acceptable resolution of this issue. In
9 the event that a reasonable settlement could not be reached on this issue, I will
10 address AT&T's concerns in the next round of testimony.

11
12 **Q. DOES THIS COMPLETE YOUR TESTIMONY?**

13 A. Yes.

I, Robert J Kirchberger hereby swear and affirm that the foregoing rebuttal testimony was prepared by me or under my direct supervision or control and is true and accurate to the best of my knowledge and belief.

Signed:

A handwritten signature in black ink, appearing to read "R. Kirchberger", is written over a horizontal line.